

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:MAN:2:PREF-101359-02
AKozoulina

date: 1/24/02

to: Henry V. Singleton, Territory Manager, Territory 1100,
Financial Services

from: Area Counsel, LMSB
(Financial Services)

subject: Extension of time for filing tax returns.

Statute of Limitations Expires: [REDACTED]

Taxpayer: [REDACTED]

EIN: [REDACTED]

Year: [REDACTED]

U.I.L. Nos. 6074.00-00, 6072.02-00, 6081.00-00, 6081.04-00

This memorandum responds to your request for assistance dated December 17, 2001. This memorandum should not be cited as precedent. Specifically, you have asked our office whether an extension for filing Form 1120F, U.S. Income Tax Return of a Foreign Corporation, by the [REDACTED] ("[REDACTED]") (E.I.N. [REDACTED]) until April 15, [REDACTED] can be granted by the Service on the basis that the taxpayer's offices and relevant records were destroyed during the terrorist attack of September 11, 2001. You have also asked, whether there is any alternative statutory provision in the Code that may allow the extension for filing the [REDACTED]'s return until April 15, [REDACTED].

Issues

1. Whether an extension for filing Form 1120F, U.S. Income Tax Return of a Foreign Corporation, by [REDACTED] until April 15, [REDACTED] can be granted by the Service on the exam level on the basis that the taxpayer's offices and relevant records were destroyed during the terrorist attack of September 11, 2001.

2. Whether there is any alternative statutory provision in the Code that may provide relief to the taxpayer and allow an extension for the filing of [REDACTED]'s Form 1120F until April 15, [REDACTED].

Conclusions

1. The Secretary granted [REDACTED] and other similarly situated

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taxpayers affected by the terrorist attack, a postponement for filing their tax returns until February 15, [REDACTED]. There is no "reasonable cause" provision in I.R.C § 6081 or any other Code section that would allow an additional extension for filing the [REDACTED]'s tax return. Therefore, on the exam level, the Service cannot grant the requested extension. However, on the exam level, the Service may grant "reasonable cause" relief from late filing penalties if it determines that such relief is warranted, if the [REDACTED]'s return is filed late.

2. Further relief can be provided by the Secretary under I.R.C. § 7508A. Under this section, the Secretary has authority to issue guidance further postponing the due date for filing tax returns by up to 120 days from the original due date. The Secretary has not exhausted such authority with respect to [REDACTED], since under Notice 2001-68, [REDACTED] obtained only a 60 day postponement for filing until February 15, [REDACTED].

Facts

[REDACTED] was established in [REDACTED] and has always been a [REDACTED] financial market, providing consumer and business banking and investment services. At the end of [REDACTED], [REDACTED], along with [REDACTED] and [REDACTED], formed a new financial services group called the [REDACTED] ("[REDACTED]"), [REDACTED].

[REDACTED] is a [REDACTED] banking corporation that has [REDACTED] [REDACTED], was incorporated in [REDACTED], and was a Head Office of [REDACTED].

The terrorist attack of September 11, 2001, left the offices of [REDACTED], with relevant records and computers destroyed also. [REDACTED]

On [REDACTED], [REDACTED], resumed its operations temporarily in [REDACTED], at [REDACTED]. Although partial back up systems of [REDACTED]

the bank were located in the [REDACTED], they were far from being complete. In addition, significant amounts of paper documents, mainly related to international trade, had not been saved at all.

[REDACTED]'s original due date for filing its Form 1120F, U.S. Income Tax Return of a Foreign Corporation, was June 15, [REDACTED]. This due date was extended until December 15, [REDACTED] as a result of a timely filed extension under I.R.C. § 6081. After the terrorist attack of September 11, 2001, the Secretary provided tax relief to affected taxpayers in Notices 2001-61, 2001-63, and 2001-68. Notice 2001-68 applied specifically to [REDACTED] and other similarly situated taxpayers, and granted an additional postponement for filing their tax returns until February 15, [REDACTED]. On [REDACTED], [REDACTED], through its representative, contacted the Service requesting a further postponement of the due date for filing until April 15, [REDACTED].

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon.

You should be aware that, under routing procedures which have been established for opinions of this type, our memorandum is referred to the National Office of Chief Counsel for review.

Discussion

Issue 1:

Generally, a taxpayer is required to file a tax return and pay any tax owed by the applicable due date. If the return is not timely filed, a late filing penalty is imposed under I.R.C. § 6651(a), unless the taxpayer shows that the delay resulted from reasonable cause rather than willful neglect. Generally, such penalty is asserted or assessed after the return is received by the Service based on the circumstances at the time the return is received. See IRM 120.1 Penalty Handbook 2.1.2 (3), August, 20, 1998. Consequently, reasonable cause relief from the penalty may be granted by the Service after the return is filed. For example, the IRM explains that "the initial request for relief may occur either after an examination, but before a penalty is actually assessed, or with a return that is either filed or paid late." See IRM 120.1.1 Penalty Handbook, 1.3.4.

On the other hand, the taxpayer may avoid paying late filing penalties by filing a timely request for an extension of time to file a return under I.R.C. § 6081. Then, for the duration of the

extension period, the taxpayer is not liable for the late filing penalties. Under I.R.C. §6081(a), "such extension cannot be for more than 6 months," and there is no "reasonable cause" exception from this statutory limit of 6 months. There is also no "reasonable cause" provision in any other relevant Code section which would allow an additional extension of time for filing beyond the initial 6 month period. Further postponement (not extension) of the due date may be granted by the Secretary through issuance of guidance under I.R.C. § 7508A.

In our case, [REDACTED] had timely filed for a 6-month extension of its original filing due date of June 15, [REDACTED] until December 15, [REDACTED] under § 6081. After the terrorist attack of September 11, 2001, the [REDACTED]'s due date was postponed until February 15, [REDACTED] under Notice 2001-68, issued by the Secretary to provide tax relief to affected taxpayers under § 7508A.

There is no "reasonable cause" statutory provision giving the Service authority to further extend [REDACTED]'s due date for filing its return. However, after [REDACTED] files its tax return with the Service, the Service on the exam level, may grant a "reasonable cause" relief from the § 6651(a) late filing penalties if [REDACTED] provides a satisfactory explanation of the reasons for why it qualifies for such relief. Notice 2001-68, issued by the Secretary on November 2, 2001, confirms this conclusion: "reasonable cause relief may also be available to taxpayers who did receive relief under Notice 2001-61 or this notice but who nevertheless could not meet their tax obligations within the relief period. A request for relief from penalties for reasonable cause should be attached to the return with an explanation of the reasons supporting relief. If penalties are assessed, Form 843, Claim for Refund and Request for Abatement, may be completed as a request for reasonable cause relief from penalties." See Notice 2001-68; 2001-47 IRB 504 (November 19, 2001).

Accordingly, the Service cannot grant the requested extension of time for filing [REDACTED]'s tax return at the exam level. However, after [REDACTED] files its tax return with the Service, the Service, on the exam level, may grant "reasonable cause" relief from the § 6651(a) late filing penalties if the reasons for late filing would qualify as a "reasonable cause."

Issue 2:

We have already come to a conclusion that the relief under I.R.C. § 6081 has been exhausted, while relief from I.R.C. § 6651(a) might be available after the [REDACTED]'s tax return is filed. One additional section in the Code, I.R.C. § 7508A, may possibly provide alternative relief to [REDACTED]. However, such relief cannot be

granted by the Service on the exam level, and must be granted directly by the Treasury Secretary.

Section 7508A provides the Secretary with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer affected by a Presidentially declared disaster as defined in section 1033(h)(3). Pursuant to I.R.C. § 7508A(a) and Treas. Reg. § 301.7508A-1, a period of up to 120 days may be disregarded in determining whether the performance of certain acts, including the filing of certain tax returns, is timely under the internal revenue laws¹. However, the Secretary does not apply section 7508A on a case-by-case basis. Instead, it issues a revenue ruling or a notice related to a group of similarly situated taxpayers.

Under Treas. Reg. § 301.7508A-1(e), if any tax-related deadline is postponed under section 7508A, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance published in the Internal Revenue Bulletin describing the acts postponed, the number of days disregarded with respect to each act, the time period to which the postponement applies, and the location of the covered disaster area. Guidance will be published by the Service as soon as practicable after the declaration of a Presidentially declared disaster.

In the aftermath of the terrorist attack of September 11, 2001, under the authority granted by I.R.C. § 7508A, the Secretary issued Notices 2001-61, 2001-63, and 2001-68, Rev. Proc. 2001-53, and others. Notice 2001-68 granted taxpayers on an extension (not on a postponement under section 7508A) that expired on or after December 1, 2001, and on or before January 31, 2002, a postponement for filing their tax returns until February 15, 2002 if the taxpayers had difficulty in meeting their federal tax obligations because their records, computers, or other essential supporting services were lost or damaged, or essential personnel were injured or killed, or are missing as a result of the terrorist attack. Thus, because [REDACTED] was on extension until December 15, [REDACTED], to file its return, it obtained only a 60-day postponement for filing its tax return, while the statute allows the Secretary to grant a maximum of a 120-day postponement for filing.

If you have any questions, telephone Anna Kozoulina of our office

¹ Under legislation passed by Congress and currently pending with the President, the Secretary may disregard up to 1 year in determining whether certain acts are timely performed. Victims of Terrorism Tax Relief Act of 2001, H.R. 2884, 107th Cong. sec. 112 (2001).

at (212)436-1503.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
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(Financial Services)

By: _____
ANNA KOZOULINA
ATTORNEY, LMSB-2